

United States  
Circuit Court of Appeals

For the Ninth Circuit. 16

LI BING SUN,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration,  
Port of San Francisco,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Southern Division.

FILED

DEC 4 - 1931

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

For Petitioner and Appellant:

STEPHEN M. WHITE, Esq., 576 Sacramento  
St., San Francisco, California.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-  
cisco, Cal.

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In the Southern Division of the United States Dis-  
trict Court, in and for the Northern District  
of California, Second Division.

No. 20,506-S.

In the Matter of LI BING SUN on Habeas Corpus.  
No. 29841/3-9; ex SS. "PRESIDENT  
CLEVELAND," November 26, 1930.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable, the Southern Division of the  
United States District Court, for the Northern  
District of California:

The petition of Li Bing Jing respectfully shows:

I.

That his brother, Li Bing Sun, hereinafter re-  
ferred to as the detained, is 26 years old, that he is  
a person of Chinese descent, that he was born in  
China and that he has always been a subject of  
China.

## II.

That the detained was first admitted to the United States on February 16, 1920, by the United States Immigration authorities for the Port of San Francisco, California, under the status of a minor son of a Chinese merchant, and that, thereafter, he made the following trips to China: departed on November 27, 1926, and returned on October 20, 1927; departed on November 22, 1929, and returned on November 26, 1930.

## III.

That incident to the detained's departure from the United States on November 22, 1929, he applied to the United States Immigration authorities for the Port of San Francisco, for a so-called [1\*] laborer's return certificate, Form 432, which certificate was issued to him by the said immigration authorities as the result of evidence produced by the detained showing that he was a Chinese person, who was lawfully domiciled in the United States and who had property therein to the amount of \$1,000.00, the property consisting of money in the amount of \$1,000.00 on deposit with the American Trust Company, No. 464 California Street, San Francisco, California.

## IV.

That, incident to his return to the United States on November 26, 1930, the detained presented to the United States Immigration authorities for the Port of San Francisco, as evidence of his right to admission, the so-called laborer's return certificate,

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\*Page-number appearing at the foot of page of original certified Transcript of Record.



which had been issued to him prior to his departure from the United States on November 22, 1929, as aforesaid, but that the said immigration authorities, through a Board of Special Inquiry, while admitting that the said certificate was regularly and properly issued and that the detained was the proper holder thereof, nevertheless, refused to admit the detained to the United States upon the said certificate, for the reason that the detained was absent from the United States for more than one (1) year, to wit: one (1) year and four (4) days, having departed from the United States on November 22, 1929, and having returned on November 26, 1930, and that his failure to present another and further certificate issued by the American Consul in China showing that his absence of more than one year was necessitated by sickness or other cause of disability beyond his control; that the detained was thereupon excluded from admission to the United States by a Board of Special Inquiry and ordered deported to China; that an appeal was taken to the Secretary of Labor with the result that the decision of the Board of Special Inquiry was affirmed.

#### V.

That the detained is now in the custody of John D. Nagle, Commissioner of Immigration for the Port of San Francisco, at the [2] United States Immigration station at Angel Island, State and Northern District of California, Southern Division thereof, and that the said John D. Nagle, acting under the orders of the Secretary of Labor, has given notice of his intention to deport the detained

away from and out of the United States to China on the first available steamer and, unless this Court intervenes, the detained will be deported on the SS. "President Madison," which sails from the Port of San Francisco on the 13th day of February, 1931.

## VI.

That your petitioner alleges that the Board of Special Inquiry and the Secretary of Labor, and each of them, in excluding the detained from admission to the United States and in ordering his deportation to China, and the said John D. Nagle, in holding him in custody so that his deportation may be effected, are unlawfully imprisoning, confining and restraining the detained of his liberty in each of the following particulars, to wit:

A. That the so-called laborer's return certificate, Form 432, upon which the detained departed from the United States for China on November 22, 1929, and which he presented to the said immigration authorities, as evidence of his right to admission, upon his return to the United States on November 26, 1930, was issued to the detained by the United States Immigration authorities for the Port of San Francisco, under and by virtue of the Act of Congress of September 13, 1888 (25 Stat. L. 476, 477), providing as follows:

"Sec. 5. That from and after the passage of this act, no Chinese laborer in the United States shall be permitted, after having left, to return thereto, except under the conditions stated in the following sections.

Sec. 6. That no Chinese laborer within the purview of the preceding section shall be permitted to return to the United States unless he has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement.

\* \* \* \* \* [3]

If the right to return be claimed on the ground of property or of debts, it must appear that the property *in bona fide* and not colorably acquired for the purpose of evading this act, or that the debts are unascertained and unsettled and not promissory notes or other similar acknowledgments of ascertained liability.

Sec. 7. That a Chinese person claiming the right to be permitted to leave the United States and return thereto on any of the grounds stated in the foregoing section, shall apply to the Chinese inspector in charge of the district from which he wishes to depart at least a month prior to the time of his departure, and shall make on oath before the said inspector a full statement descriptive of his family, or property, or debts, as the case may be, and shall furnish to said inspector such proofs of the facts entitling him to return as shall be required by the rules and regulations prescribed from time to time by the Secretary of Labor, and for any false swearing in relation thereto he shall incur the penalties of perjury.

\* \* \* \* \*

And if the said inspector, after hearing the

proofs and investigating all the circumstances of the case, shall decide to issue a certificate of return, he shall at such time and place as he may designate, sign and give to the person applying a certificate containing the number of the description last aforesaid, which shall be the sole evidence given to such person of his right to return.

\* \* \* \* \*

The right to return under the said certificate shall be limited to one year; but it may be extended for an additional period, not to exceed a year, in cases where, by reason of sickness or other cause of disability beyond his control, the holder thereof shall be rendered unable sooner to return, which facts shall be fully reported to and investigated by the consular representative of the United States at the port or place from which such laborer departs for the United States, and certified by such representative of the United States to the satisfaction of the Chinese inspector in charge at the port where such Chinese person shall seek to land in the United States, such certificate to be delivered by said representative to the master of the vessel on which he departs for the United States.

And no Chinese laborer shall be permitted to reenter the United States without producing to the proper officer in charge at the port of such entry the return certificate herein required. A Chinese laborer possessing a certificate under this section shall be admitted to the

United States only at the port from which he departed therefrom, and no Chinese person, except Chinese diplomatic or consular [4] officers, and their attendants, shall be permitted to enter the United States except at the ports of San Francisco, Portland, Oregon, Boston, New York, New Orleans, Port Townsend, or such other ports as may be designated by the Secretary of Labor.

Sec. 8. That the Secretary of Labor shall be, and he hereby is, authorized and empowered to make and prescribe, and from time to time to change and amend such rules and regulations, not in conflict with this act, as he may deem necessary and proper to conveniently secure to such Chinese persons as are provided for in articles second and third of the said treaty between the United States and the Empire of China, the rights therein mentioned, and such as shall also protect the United States against the coming and transit of persons not entitled to the benefit of the provisions of said articles."

That, by virtue of the power vested in the Secretary of Labor under Section 8 of the Act of Congress of September 13, 1888, *supra*, the Secretary of Labor promulgated rules and regulations governing the issuance of so-called laborers' return certificates, which rules and regulations were in full force and effect at the time of the issuance to the detained of his laborer's return certificate; that the said rules and regulations provide as follows:

**RULE 12. LABORER'S RETURN CERTIFICATE, WHO ENTITLED TO.**

“The laborer’s return certificate provided by section 7 of the act of September 13, 1888, shall be issued only to such Chinese persons as have been duly registered under the provisions of the act of May 5, 1892, or the act of November 3, 1893, and present a certificate issued thereunder, or such as have established before a court of competent jurisdiction the lawfulness of their residence in the United States and presented a certified copy of the court’s decision, or such as otherwise establish before the immigration official to whom application for the return certificate is made that they are lawfully within the United States.”

**RULE 14. EXTENSION OF TIME LIMIT OF RETURN CERTIFICATES.**

‘Whenever a Chinese laborer holding a return certificate is detained by his sickness or by other disability beyond his control for a time in excess of one year after the date of his departure from the United States, the facts shall be fully reported to and investigated by the consular representative of the United States at the port or place from which such laborer [5] departs for the United States, and such consular representative shall certify, to the satisfaction of the officer in charge at the port of return, which must be the port from which

such laborer departed, that he has fully investigated the statements of such laborer and believes that he was unavoidably detained for the time specified and for the reason stated, such certificate to be delivered by such consular representative to the master of the vessel on which the Chinese laborer departs for the United States, and by the master delivered to the officer in charge at the port of return.”

That your petitioner alleges that under Section 7 of the Act of Congress of September 13, 1888, and Rules XII and XIV, *supra*, of the Secretary of Labor, the validity of the so-called laborer's return certificate issued to the detained and the right of the detained to return to the United States and to be admitted thereto upon said certificate could not, as a matter of law, be affected by the absence of the detained from the United States for a period of more than one (1) year and less than two (2) years, provided (1) that he was unable to return to the United States within one year by reason of sickness or other cause of disability beyond his control and (2) that the facts pertaining to the sickness or other cause of disability were made known to the American Consular representative at Hongkong, China, the port at which the detained departed for the United States and that the said Consular representative, after an investigation, reported and certified the facts to the satisfaction of the Commissioner of Immigration for the Port of San Francisco, the port from which the detained departed from the United States; that, in this connection,

your petitioner alleges that the detained, for a period of several months previous to his embarkation at Hongkong, China, for the United States, was suffering from boils on his feet and that on August 14, 1930, and, again, on September 20, 1930, he reported his condition to the American Consul at Hongkong, on each of which occasions he applied to the said Consul for the issuance of a certificate showing that his condition was such as to [6] prevent him from returning to the United States within one year from the date of his departure therefrom, but that the said Consul failed and neglected to investigate the facts pertaining to the detained's sickness and/or to fully report and certify the facts thereof and/or to issue a certificate disclosing whether or not the detained's sickness was such as to prevent him from returning to the United States within one year from the date of his departure therefrom; that the Board of Special Inquiry and the Secretary of Labor, decided that the detained was not prevented from returning to the United States within one year from the date of his departure therefrom by reason of sickness or other cause of disability beyond his control without the certificate of the American Consul at Hongkong, China, or of any consular representative, disclosing the facts pertaining to the detained's sickness and/or a full and complete report by said Consul or of any consular representative as to the facts pertaining to the detained's sickness; that the said American Consul at Hongkong, China, in failing and neglecting to fully investigate, report and cer-



tify the facts pertaining to the detained's sickness, omitted to perform his duty as required by law, and the Board of Special Inquiry and the Secretary of Labor, in denying the detained admission to the United States, without a full investigation, report and certificate by said American Consul or his representative as to facts pertaining to the detained's sickness, acted without jurisdiction and in excess of the authority and power committed to them by **the statute** in such cases made and provided for and rules and regulations promulgated in pursuance thereof, that they have thereby acted arbitrarily and unfair and have denied the detained the full and fair hearing to which he was and is entitled.

B. That your petitioner alleges that the evidence adduced before the Board of Special Inquiry, which evidence was before the Secretary of Labor, discloses that the detained for several months [7] prior to his departure at Hongkong, China, for the United States, was suffering from boils on his feet, on account of which he was unable to travel, and that his condition continued until about October 7, 1930, and that thereafter he was placed under observation by the United States Public Health Service at Hongkong, China, for a period of 14 days for the purpose of ascertaining whether or not he was afflicted with cerebro-spinal meningitis and that during this period he was required by said Service to be vaccinated; that he was not discharged from observation and treatment by the United States Public Health Service until October 21, 1930, and that thereafter, to wit, on November 4, 1930,

he sailed on the first available steamer leaving Hongkong, China, for the United States; that, by virtue of the facts aforesaid the detained was unable to sooner return to the United States and that his return on November 26, 1930, and not prior thereto was due to no fault of his but was caused by sickness or other cause of disability beyond his control; that the facts, aforesaid, pertaining to the detained's delay in China were known to the American Consul of Hongkong, but that the said Consul failed and neglected to investigate, report and certify said facts as required by law; that there was no certificate of said Consul, as to the facts pertaining to the delay of the detained in China, before the Board of Special Inquiry and the Secretary of Labor, or either of them, and no evidence of any kind or character showing that the delay of the detained in China and his failure to return to the United States within one year from the date of his departure therefrom were not caused by sickness or other disability beyond his control; that the said Board of Special Inquiry and the Secretary of Labor, in denying the detained admission to the United States without evidence of any kind or character showing that the detained's delay in China and his failure to return to the United States within one year from the date of his departure therefrom, were not caused by [8] sickness or other cause of disability beyond his control, have acted without jurisdiction and in excess of the power and authority committed to them by the statute in such cases made and provided for and have

thereby acted arbitrarily and unfair and have denied the detained the full and fair hearing to which he was and is entitled.

## VII.

That your petitioner has filed herewith, as Exhibit "A," testimony adduced before the Board of Special Inquiry and a copy of the findings and decision of the Board of Special Inquiry and hereby makes the said testimony and decision a part of this petition with the same force and effect as if set forth in full herein.

## VIII.

That the said detained is in detention, as aforesaid, and for said reason is unable to verify this said petition upon his own behalf and for said reason petition is verified by your petitioner, but for and as the act of the said detained, and upon his behalf.

WHEREFORE, your petitioner prays that a writ of habeas corpus be issued and directed to John D. Nagle, Commissioner of Immigration for the Port of San Francisco, California, commanding and directing him to hold the body of your petitioner's brother, the detained, within the jurisdiction of this Court, at a time and place to be specified in this order, together with the time and cause of his detention, so that the same may be inquired into to the end that said detained may be restored to his liberty and go hence without day.



EXHIBIT "A."

(Testimony Adduced Before Board of Special Inquiry and Findings and Decision of Board of Special Inquiry.)

HEADING FOR TESTIMONY.  
U. S. DEPARTMENT OF LABOR  
IMMIGRATION SERVICE.

B.S.I. No. 4.

Manifest No. 29841/3-9.

November 29, 1930.

In the Matter of LI BING SUN, Laborer 432  
O. T.

C. M. WURM, Chairman.

R. J. McGRATH, Member.

H. M. DOWNIE, Member.

APPLICANT sworn and admonished that if at any time he fails to understand the Interpreter to immediately so state. Advised of perjury.

Q. What are all your names?

A. LI BING SUN, LI FAT YIM, no other.

Q. You are advised your right to admission to this country will be to-day considered by this board. No witnesses are present. The regulations under which this hearing is being conducted permit you to have a friend or relative present during the hearings to be conducted but such relative or friend cannot be your attorney nor the representative of any immigrant aid or other similar society; he must actually be a relative or friend of yours. Do you wish to use this right?

A. No, I waive my right.

Q. You are also informed that the burden of proof rests upon you to show you are not subject to exclusion under any provisions of the Immigration laws. A. I understand.

NOTE: Applicant present upon arrival original Form 432, numbered 12017/38212, showing departure from San Francisco Nov. 22, 1929.

APPLICANT answers manifest questions as follows: I am 26 years old, born KS. 32-3-3 (March 27, 1906) at the Hong Woo Village, SND; male of the Chinese *reac*; my residence for the past five years was San Francisco until my departure for China in Nov. 1929, since when I have been living in the HONG WOO VILLAGE; I have been married once only; I was married CR. 15-12-21 (Jan. 24, 1927) to HOM SHEE, who is about 23 years old, has natural feet and is now living at HONG WOO VILLAGE; I have one son, no daughters, his name is [11] LI KEN HONG, 4 years old, born CR. 16-12-2 (Dec. 25, 1927), now living with my wife in HONG WOO VILLAGE; my wife is an expectant mother; my occupation is that of a cook; I can speak, read and write Chinese only; my parents are LI PUN or LI CHUNG FON, my father, now living in Stockton, and CHIN SHEE, my mother, about 54 years old, now at HONG WOO VILLAGE, SND; I am destined to San Francisco where I expect to resume my occupation as cook; I intend to remain in this country permanently; I have never been arrested or supported by charity neither myself nor parents have

ever been treated for insanity; I have never been excluded and deported or arrested and deported; I do not believe in polygamy or anarchy; I have \$1000 in American currency on deposit in the bank, and the pass-book is with the CHUN FOOK COMPANY in San Francisco, at 1041 Grant Ave., in the care of LI OAK LOY.

Q. Did you live in the HONG WOO VILLAGE CONTINUOUSLY after reaching China until you departed for this country?   A. Yes.

Q. What occupation did you follow while you were last in China?

A. I had no occupation during that period.

Q. How many visits have you made to China as a laborer on Form 432?   A. Two.

Q. Did you know prior to leaving on both of those two visits that you must return to the U. S. within one year from the date of your departure?

A. Yes.

Q. What caused you to return to the U. S. after a year from date of departure?

A. I was suffering from boils on my feet and on account of that I had to postpone my return to the U. S. I expected to return on the "Press. Grant" but I thought that being 4 days overtime would not cause any difficulty in my landing.

Q. When did the "Pres. Grant" leave Hong-kong?

A. About the 30th day of the 8th month, this year, Chinese reckoning (Oct. 21, 1930).

Q. When did you cease having trouble from boils?

A. About the 16th day of the 8th month (Oct. 7, 1930).

Q. Then you deliberately delayed your return to the U. S. until the "Pres. Cleveland" sailed. Is that right?

A. I was detained for about 2 weeks in Hongkong on visits to the doctor for examination.

Q. Do you mean the U. S. Public Health doctor?

A. Yes.

Q. Have you any papers showing this to be a fact?

A. (Present certificate of L. C. Stewart, Medical Officer, U. S. P. H. S. certifying that LI BING SUN, sailing to-day for San Francisco from Hongkong on the "Pres. Cleveland" has not been in contact during the last 14 days with anyone suffering from cerebro-spinal meningitis; also vaccination certificate and inspection card of U. S. P. H. S., Hongkong, showing LI BING SUN, who departed Nov. 4, 1930, on "Pres. Cleveland" was vaccinated Oct. 18, 1930, and reported Oct. 20, and Oct. 21. This card bears applicant's photograph. Same are retained on file.)

Q. Was there an epidemic of spinal meningitis in Hongkong during the time you were there?

A. No.

Q. When you were in Hongkong did you *go the* American Consulate? A. Yes.

Q. Do you remember the date when you first went there?

A. It was before I went to the U. S. Public



Health Service. It was about the 29th day of the 8th month (Oct. 20). [12]

Q. You knew then that you could not return here on the "Pres. Grant," did you not? A. Yes.

Q. Why did you not get an overtime certificate from the Consul?

A. I attempted to secure an overtime certificate but the American Consul refused to issue it to me. He did not state any reasons for refusing to do so. Chairman to other Board Members.

Q. Do you wish to question the applicant?

Member McGRATH: No.

Member DOWNIE: No.

(Chairman to Applicant.)

Q. Have you understood the interpreter?

A. Yes. (Thru Mrs. D. K. Chang).

Signed.

PERSONAL DESCRIPTION: Male of the Chinese race; 5' 6"; pinmole outer corner left eye.

I hereby certify to the correctness of the above transcript.

DOWNIE, Steno.

### SUMMARY.

This applicant first arrived in this country Dec. 29, 1919, admitted Feb. 16, 1920, as the son of a merchant. He has made one visit, other than the present one, to China, departing on Form 432 Nov. 27, 1926, and returning Oct. 20, 1927. He departed on his last trip to China, from which he is now returning on Form 432, Nov. 22, 1929, returning here Nov. 26, 1930, thus having been absent

from the United States one year and four days. From the above it will be seen that he has had, prior to last departure, nine years and nine months residence in the United States.

Statement was taken by this board from the applicant and it will be noted therein that the reason he was delayed in China and prevented from returning within the year was on account of boils. He further stated that he had attempted to obtain overtime certificate from the American Consul at Hongkong, but was refused. It will be noted on the reverse side of the Form 432 presented by this Chinese the following notations: "8/14/30 Ext. Req. RMJ"; and "American Consulate General Oct. 20, 1930, Hongkong Sailing Oct. 23, 1930. O. K. RMJ."

As he was granted Form 432 prior to departure on property, money in the bank, deposited with the American Trust Co., 464 California St., San Francisco, Account No. 2919. which passbook, so applicant states, is now in the hands of one LI OAK LOY, who can be located at the CHUN FOOK CO., 1041 Grant Ave., San Francisco, I believe that before final action is taken in this case that the matter of this property being in the bank should be investigated, and I make a motion to defer for that purpose.

Member McGRATH: I second the motion.

Member DOWNIE: I concur. [13]

HEADING FOR TESTIMONY.

U. S. Department of Labor,  
Immigration Service.

B. S. I. No. A.

Manifest No. 29841/3-9. Dec. 3, 1930. Pg. 4.

In the Matter of LI BING SUN, Laborer 432 Ot.

C. M. WURM, Chairman.

R. J. McGRATH, Member.

H. M. DOWNIE, Member.

By CHAIRMAN: Supplementing previous deferring decision of this board of Nov. 29, 1930.

Investigation since then conducted discloses that the basis of the applicant for Form 432, namely, deposit of \$1000 in the applicant's name carried by the American Trust Co., 464 California St., San Francisco, remains the same as when this applicant proceeded from the United States.

As stated in the first paragraph of the board's previous summary of November 29th, the applicant has remained away from the United States over the statutory period of one year; he is not in possession of an overtime consular certificate as provided for in the Act of Sept. 13, 1888, nor does it appear that he was rendered unable sooner to return to this country through sickness or other causes of disability beyond his control. The said act further states: "And no Chinese laborer shall be permitted to reenter the United States without producing to the proper officer in charge at such port of entry the return certificate herein required." The appli-

cant was employed as a cook before proceeding to China on November 22, 1929, hence he is a laborer.

I move that the applicant be excluded on the ground that he is a Chinese laborer not in possession of a *balid* laborer's return certificate, nor in possession of an overtime consular certificate, nor does the evidence [14] reasonably establish that his return to the United States at this time was delayed by sickness or other cause of disability beyond his control, and for the further reason that the burden of proof has not been sustained as required by Section 23 of the Act of 1924.

Member McGRATH: I second the motion.

Member DOWNIE: I concur. [15]

#### SUMMARY.

This applicant first arrived in this country Dec. 29, 1919, admitted Feb. 16, 1920, as the son of a merchant. He has made one visit, other than the present one, to China, departing on Form 432 Nov. 27, 1926, and returning Oct. 20, 1927. He departed on his last trip to China, from which he is now returning, on Form 432, Nov. 22, 1929, returning here Nov. 26, 1930, thus having been absent from the United States one year and four days. From the above it will be seen that he has had, prior to last departure, nine years and nine months residence in the United States.

Statement was taken by this Board from the applicant and it will be noted therein that the reason he was delayed in China and prevented from returning within the year was on account of boils.

He further stated that he had attempted to obtain overtime certificate from the American Consul at Hongkong, but was refused. It will be noted on the reverse side of the Form 432 presented by this Chinese the following notations: "8/14/30 Ext req. RMJ"; and "American Consulate General Oct. 20, 1930 Hongkong Sailing Oct. 23, 1930 O. K. RMJ."

As he was granted Form 432 prior to departure on property, money in the bank, deposited with the American Trust Co., 464 California St., San Francisco, Account No. 2919, which passbook, so applicant states, is now in the hands of one LI OAK LOY, who can be located at the CHUN FOOK CO., 1041 Grant Ave., San Francisco, I believe that before final action is taken in this case that the matter of this property being in the bank should be investigated, and I make a motion to defer for that purpose.

By Member McGRATH: I second the motion.

Member DOWNIE: I concur. [16]

29841/3-9.

By CHAIRMAN.—Supplementing previous deferring decision of this board of Nov. 29, 1930:

Investigation since then conducted discloses that the basis of the applicant for Form 432, namely, deposit of \$1000 in the applicant's name carried by the American Trust Co., 464 California St., San Francisco, remains the same as when this applicant proceeded from the United States.

As stated in the first paragraph of the board's previous summary of November 29th, the applicant

has remained away from the United States over the statutory period of *n* one year; he is not in possession of an overtime consular certificate as provided for in the Act of Sept. 13, 1888, nor does it appear that he was rendered unable sooner to return to this country through sickness or other cause of disability beyond his control. The said act further states: "And no Chinese laborer shall be permitted to reenter the United States without producing to the proper officer in charge at such port of entry the return certificate herein required." The applicant was employed as a cook before proceeding to China on November 22, 1929, hence he is a laborer.

I move that the applicant be excluded on the ground that he is a Chinese laborer not in possession of a valid laborer's return certificate, nor in possession of an overtime consular certificate, or does the evidence reasonably establish that his return to the United States at this time was delayed by sickness or other cause of disability beyond his control, and for the further reason that the burden of proof has not been sustained as required by Section 23 of the Act of 1924.

Member McGRANT: I SECOND THE MOTION.

Member DOWNIE: I CONCUR.

[Endorsed]: Filed Feb. 11, 1931. [17]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor, and upon reading the verified petition on file herein—

IT IS HEREBY ORDERED that John D. Nagle, Commissioner of Immigration for the Port of San Francisco, appear before this court on the 2d day of March, 1931, at the hour of 10 o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein, as prayed for, and that a copy of this order be served upon the said Commissioner, and a copy of the petition and said order be served upon the United States Attorney for this District, his representative herein.

AND IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration, as aforesaid, or whoever, acting under the orders of the said Commissioner, or the Secretary of Labor, shall have the custody of the said Li Bing Sun, or the Master of any steamer upon which he may have been placed for deportation by the said Commissioner, are hereby ordered and directed to retain the said Li Bing Sun, within the custody of the said Commissioner of Immigration, and within the jurisdiction of this Court until its further order herein.

Dated at San Francisco, California, February 11th, 1931.

FRANK H. KERRIGAN,  
United States District Judge.

[Endorsed]: Filed Feb. 11, 1931. [18]

[Title of Court and Cause.]

APPEARANCE OF RESPONDENT.

Now comes respondent through its undersigned attorney and in return to the order to show cause herein, files herewith as Respondent's *Excerpts* "A" to "D," inclusive, the original Immigration records of the proceedings before the Bureau of Immigration and the Secretary of Labor relative to the above-named person, Li Bing Sun.

GEO. J. HATFIELD,  
United States Attorney,  
(Attorney for Respondent).

[Endorsed]: Filed May 4, 1931, 2:44 P. M. [19]

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District Court of the United States, Northern District of California, Southern Division.

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 4th day of May, in the year of our Lord one thousand nine hundred and thirty-one. Present: The Honorable A. F. ST. SURE, District Judge.



No. 20,506.

In the Matter of LI BING SUN, on Habeas Corpus.

MINUTES OF COURT—MAY 4, 1931—ORDER  
SUBMITTING APPLICATION FOR WRIT  
OF HABEAS CORPUS.

The application for a writ of habeas corpus (by order to show cause) came on this day to be heard. S. M. White, Esq., appearing as attorney for petitioner, and H. A. van der Zee, Esq., Asst. U. S. Atty., appearing as attorney for respondent. Mr. van der Zee introduced and filed the record of the Bureau of Immigration and the appearance of the respondent. After hearing the attorneys, IT IS ORDERED that the application for a writ of habeas corpus be submitted upon the filing of briefs in 5 and 3 days. [20]

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[Title of Court and Cause.]

ORDER DENYING AND DISMISSING AP-  
PLICATION FOR WRIT OF HABEAS  
CORPUS, ETC.

This matter having been heard on the application for a writ of habeas corpus (by order to show cause), and having been argued and submitted,—

IT IS ORDERED, after a full consideration, that the application for a writ of habeas corpus be and the same is hereby DENIED; that the petition be and the same is hereby DISMISSED; that the

order to show cause be, and the same is hereby DISCHARGED; and that the applicant be deported by the United States Immigration Authorities at San Francisco, California.

Dated: August 11, 1931.

A. F. ST. SURE,  
U. S. District Judge.

[Endorsed]: Filed Aug. 11, 1931, 3:02 P. M.  
[21]

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[Title of Court and Cause.]

#### NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court, to JOHN D. NAGLE, Commissioner of Immigration, and to GEORGE J. HATFIELD, Esq., United States Attorney, His Attorney:

You and each of you will please take notice that Li Bing Jing, the petitioner in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein on August 11, 1931, denying the petition for a writ of habeas corpus filed herein.

Dated this 19th day of August, 1931.

STEPHEN M. WHITE,  
Attorney for Appellant. [22]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Li Bing Jing, the petitioner in the above-entitled matter, through his attorney, Stephen M. White, Esq., and respectfully shows:

That on the 11th day of August, 1931, the above-entitled court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, the appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, for the correction of the errors as complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further, that the said appellant be held within the jurisdiction of this court during the pendency of the appeal herein, so that he may be produced in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, August 19th, 1931.

STEPHEN M. WHITE,  
Attorney for Appellant. [23]

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[Title of Court and Cause.]

### ASSIGNMENT OF ERRORS.

Now comes the appellant, Li Bing Sun, through his attorney, Stephen M. White, Esq., and sets forth the errors he claims the above-entitled court committed in denying his petition for a writ of habeas corpus, as follows:

#### I.

That the court erred in not granting the writ of habeas corpus and discharging the appellant, Li Bing Sun, from the custody and control of John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

#### II.

That the court erred in not holding that it had jurisdiction to issue the writ of habeas corpus as prayed for in the petition on file herein.

#### III.

That the court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus. [24]

#### IV.

That the court erred in holding that the evidence

adduced before the immigration authorities, was sufficient, in law, to justify the conclusion of the immigration authorities that the appellant was not entitled to admission to the United States.

## V.

That the court erred in not holding that the evidence adduced before the immigration authorities was not sufficient, in law, to justify the conclusion of the immigration authorities that the appellant was not entitled to admission to the United States.

## VI.

That the court erred in holding that the immigration authorities had jurisdiction to determine that the appellant was not entitled to admission to the United States for the reason that he was not in possession of a valid laborer's return certificate or an overtime certificate as provided for by the Act of Congress of September 13, 1888 (25 Stat. L. 476, 477).

## VII.

That the court erred in not holding that the immigration authorities were without jurisdiction to determine that the appellant was not entitled to admission to the United States for the reason that he was not in possession of a valid laborer's return certificate or an overtime certificate as provided for by the Act of Congress of September 13, 1888 (25 Stat. L. 476, 477).

## VIII.

That the court erred in holding that the immi-

gration authorities did not act arbitrarily in denying the appellant admission to the United States for the reason that he was not in possession of a valid laborer's return certificate or an overtime certificate as provided for by the Act of Congress of September 13, 1888 (25 Stat. L. 476, 477. [25]

## IX.

That the court erred in not holding that the immigration authorities acted arbitrarily in denying the appellant admission to the United States for the reason that he was not in possession of a valid laborer's return certificate or an overtime certificate as provided for by the Act of Congress of September 13, 1888 (25 Stat. L. 476, 477).

## X.

That the court erred in holding that there was substantial evidence adduced before the immigration authorities to justify the conclusion of the immigration authorities that the appellant's absence from the United States for a period of more than one year was not unavoidable and that he was not entitled to any equitable relief for failing to produce an overtime certificate, as provided for by the Act of Congress of September 13, 1888 (25 Stat. L. 476, 477), showing that his absence from the United States for a period of more than one year was unavoidable.

## XI.

That the court erred in not holding that there was no substantial evidence adduced before the immigration authorities to justify the conclusion

of the immigration authorities that the appellant's absence from the United States for a period of more than one year was not unavoidable and that he was not entitled to any equitable relief for failing to produce an overtime certificate, as provided for by the Act of Congress of September 13, 1888 (25 Stat. L. 476, 477), showing that his absence from the United States for a period of more than one year was unavoidable.

## XII.

That the court erred in holding that the appellant was accorded a full and fair hearing before the immigration authorities. [26]

## XIII.

That the court erred in not holding that the appellant was not accorded a full and fair hearing before the immigration authorities.

WHEREFORE, appellant prays that the said order and judgment of the United States District Court for the Northern District of California made, given and entered herein in the office of the Clerk of said court on the 11th day of August, 1931, denying the petition for a writ of habeas corpus, be reversed and that he be restored to his liberty and go hence without day.

Dated at San Francisco, California, August 19, 1931.

STEPHEN M. WHITE.

Attorney for Appellant.

[Endorsed]: Filed Aug. 19, 1931. [27]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing to the above-entitled court that Li Bing Jing, the petitioner herein, has this day filed and presented to the above court his petition praying for an order of this court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this court denying a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor,—

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled court make and prepare a transcript of all the papers, proceedings and records in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of said Li Bing Sun, be and the same is hereby stayed pending this appeal and that the said Li Bing Sun, be not removed from the jurisdiction of this court pending this appeal.



Dated at San Francisco, California, August 19th, 1931.

A. F. ST. SURE,  
United States District Judge.

[Endorsed]: Filed Aug. 19, 1931. [28]

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[Title of Court and Cause.]

ORDER TRANSMITTING ORIGINAL EXHIBITS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the Immigration Records filed as exhibits herein, may be transmitted by the Clerk of the above-entitled court to and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit to be taken as a part of the record on appeal in the above-entitled cause with the same force and effect as if embodied in the transcript of record and so certified by the Clerk of this court.

Dated at San Francisco, California, this 19th, day of August, 1931.

A. F. ST. SURE,  
United States District Judge.

[Endorsed]: Filed Aug. 19, 1931. [29]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please issue for transcript on appeal the following papers, to wit:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Exhibit "A" (testimony adduced before Board of Special Inquiry and findings and decision of Board of Special Inquiry).
4. Minute order respecting introduction of original immigration records.
5. Order denying petition for writ of habeas corpus.
6. Notice of appeal.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.
10. Citation on appeal.
11. Order transmitting original immigration records.
12. Praecipe.
13. Appearance of respondent.

STEPHEN M. WHITE,

Attorney for Appellant.

[Endorsed]: Filed Aug. 19, 1931. [30]

[Title of Court.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing — pages, numbered from 1 to —, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of Li Bing Sun, on habeas corpus, No. 20506-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Thirteen Dollars and 15/100, and that the said amount has been paid to me by the attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of August, A. D. 1931.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,  
Deputy Clerk. [31]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to JOHN D. NAGLE, Commissioner of Immigration, Port of San Francisco, and GEORGE J. HATFIELD, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within 30 days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Li Bing Sun, is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Southern Division of the Northern District of California, this 19th day of August, 1931.

A. F. ST. SURE,  
United States District Judge. [32]

Due service and receipt of a copy of the within citation on appeal is hereby admitted this 19th day of August, 1931.

GEORGE J. HATFIELD,  
United States Attorney,  
By \_\_\_\_\_,  
Asst. U. S. Attorney,  
Attorneys for Respondent.

[Endorsed]: Filed Aug. 19, 1931, 4:09 P. M.  
[33]

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[Endorsed]: No. 6593. United States Circuit Court of Appeals for the Ninth Circuit. Li Bing Sun, Appellant, vs. John D. Nagle, as Commissioner of Immigration, Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 26, 1931.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

